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10/783,539

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7590 12/04/2009
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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/783,539	Applicant(s) RADATTI ET AL.	
	Examiner Drew E. Becker	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 7-15, 32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-31, 34-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 16-21, 26-31, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morley [Pat. No. 1,663,719] in view of Guyon et al [Pat. No. 2,244,193].

Morley teaches a method for cooking doughnuts by providing a shell having first and second plates which are hingeably connected (Figure 1, E-G), the plates having a groove (Figure 1, C), the plates having an outer edge where the hinge is located (Figure 1, G), the plates having an inner radial edge surrounding the groove (Figure 1, C), opening the shell and extruding a dough into the groove (Figure 1, A-B), closing the shell and cooking the dough (page 1, line 94), and then cooking and shaping the dough by use of a heat source of any suitable manner (page 2, line 3). Morley does not recite inserting the shell into a fryer and submerging it, using oil at 325-375°F, providing at least two shells, and the shell being heavy enough to sink. It would have been obvious to one of ordinary skill in the art to use plural shells of Morley simultaneously since this provided a greater production rate for the doughnuts, thus reducing the waiting time for the consumers, and since cooking systems commonly used plural food holding members simultaneously, such as fryer baskets. Guyon et al teach a method for

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cooking foods within a shell (Figure 1) wherein the shell is submerged within a fryer (Figure 3) and the oil is maintained at 375-425°F (column 2, line 2). It would have been obvious to one of ordinary skill in the art to incorporate the fryer heat source of Guyon et al into the method of Morley since both are directed to methods of cooking foods within shells, since Morley already included the use of any suitable heat source (page 2, line 2), since hot oil was a commonly used heat source for food within shells as shown by Guyon et al (Figure 3), since the surrounding oil of Guyon et al was well known to provide quicker and more even heating of food as compared to conventional oven heating (column 1, lines 6-15). It further would have been obvious to one of ordinary skill in the art to provide the shell of Morley with sufficient weight for it to sink in the fryer of Guyon et al since Morley already taught modifying the shape and dimensions of the shell (page 1, lines 97-102), and since this would have ensured complete coverage of the surrounding hot oil of Guyon et al around the shell of Morley.

3. Claims 16-20, 26-30, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox [Pat. No. 1,638,673] in view of Guyon et al [Pat. No. 2,244,193].

Wilcox teaches a method for cooking doughnuts by providing a shell having first and second plates which are hingeably connected (Figure 1, #1-2), the plates having a groove (Figure 1, #3), the plates having an outer edge where the hinge is located (Figure 1, #4 & 7), the plates having an inner radial edge surrounding the groove (Figure 1, #3), opening the shell and placing food into the groove (page 1, line 86), and then closing the shell and cooking the food (page 1, line 90). Wilcox does not recite

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inserting the shell into a fryer and submerging it, using oil at 325-375°F, providing at least two shells, and the shell being heavy enough to sink. It would have been obvious to one of ordinary skill in the art to use plural shells of Wilcox simultaneously since this provided a greater production rate for the doughnuts, thus reducing the waiting time for the consumers, and since fryers commonly used plural food holding members simultaneously, such as fryer baskets. Guyon et al teach a method for cooking foods within a shell (Figure 1) wherein the shell is submerged within a fryer (Figure 3) and the oil is maintained at 375-425°F (column 2, line 2). It would have been obvious to one of ordinary skill in the art to incorporate the fryer heat source of Guyon et al into the method of Wilcox since both are directed to methods of cooking foods within shells, since Wilcox already taught other sources of heat (page 1, line 19), since hot oil was a commonly used heat source for food within shells as shown by Guyon et al (Figure 3), since the surrounding oil of Guyon et al was well known to provide quicker and more even heating of food as compared to conventional oven heating (column 1, lines 6-15), and since this would have eliminated the need for turning as required by Wilcox (page 1, line 98). It further would have been obvious to one of ordinary skill in the art to provide the shell of Wilcox with sufficient weight for it to sink in the fryer of Guyon et al since this would have ensured complete coverage of the surrounding hot oil of Guyon et al around the shell of Wilcox.

4. Claims 16-21, 26-30, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downing [Pat. No. 3,727,875] in view of Bedel [Des. 77,875] and Guyon et al [Pat. No. 2,244,193].

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Downing teaches a method for cooking doughnuts by providing a shell having first and second plates (Figures 1-3, #10-11), the plates having a groove (Figure 1, #12), the plates having an outer edge and an inner radial edge surrounding the groove (Figure 1, #12), opening the shell and placing food into the groove, and then closing the shell and cooking the food (column 1, line 29 to column 2, line 2). Downing does not recite a hinge, inserting the shell into a fryer and submerging it, using oil at 325-375°F, providing at least two shells, and the shell being heavy enough to sink. It would have been obvious to one of ordinary skill in the art to use plural shells of Downing simultaneously since this provided a greater production rate for the doughnuts, thus reducing the waiting time for the consumers, and since fryers commonly used plural food holding members simultaneously, such as fryer baskets. Bedel teaches a doughnut mold comprising two plates hinged together along the outer edge (Figures 1-2). It would have been obvious to one of ordinary skill in the art to incorporate the hinge of Bedel into the invention of Downing since both are directed to methods of making doughnuts, and since the hinge of Bedel would have ensured more precise alignment of the grooves of Downing while also providing an easier means for opening and closing the plates. Guyon et al teach a method for cooking foods within a shell (Figure 1) wherein the shell is submerged within a fryer (Figure 3) and the oil is maintained at 375-425°F (column 2, line 2). It would have been obvious to one of ordinary skill in the art to incorporate the fryer heat source of Guyon et al into the method of Downing, in view of Bedel, since all are directed to methods of cooking foods within shells, since Downing simply did not specify the particular heat source to be used, since Downing preferred baking (column

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1, line 1), since Guyon et al taught baking via submersion in oil (column 2, line 30), since hot oil was a commonly used heat source for food within shells as shown by Guyon et al (Figure 3), and since the surrounding oil of Guyon et al was well known to provide quicker and more even heating of food as compared to conventional oven heating (column 1, lines 6-15). It further would have been obvious to one of ordinary skill in the art to provide the shell of Downing with sufficient weight for it to sink in the fryer of Guyon et al since this would have ensured complete coverage of the surrounding hot oil of Guyon et al around the shell of Wilcox.

5. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downing, in view of Guyon et al and Bedel, as applied above, and further in view of Morley.

Downing, Guyon et al, and Bedel teach the abovementioned concepts. Downing, Guyon et al, and Bedel do not recite extruding dough into the groove. Morley teaches a method for making donuts by extruding dough into a groove (Figure 1). It would have been obvious to one of ordinary skill in the art to incorporate the extruded dough of Morley into the invention of Downing, in view of Guyon et al and Bedel, since all are directed to methods of making foods, since Downing already included donut dough, and since extrusion was a commonly practiced and efficient means for placing dough into the groove as shown by Morley

6. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morley, in view of Guyon et al, as applied above, and further in view of Aurio et al [20060099324] and Young et al [Pat. No. 6,048,564].

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Morley and Guyon et al teach the above mentioned concepts. Morley and Guyon et al do not recite the dough having konjac glucomannan, animal-based protein concentrate, and baking powder. Aurio et al teach a dough product comprising konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) as well as mixing (paragraph 0085) which naturally would have provided aeration of the mixture. Young et al teach a method for making dough comprising konjac glucomannan (column 4, lines 29-49) and baking powder (column 17, line 37). It would have been obvious to one of ordinary skill in the art to incorporate the konjac glucomannan, animal-based protein concentrate, and baking powder of Aurio et al and Young et al into the invention of Morley, in view of Guyon et al, since all are directed to methods of making food, since Morley already included dough as the food, since Aurio et al teach that konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) were commonly used in conjunction in food, since Young et al teach that doughs containing konjac glucomannan commonly had baking powder to provide leavening (column 17, line 37), and since all of these ingredients were commonly used in doughs in order to provide the desired taste, texture, and aroma.

7. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downing, in view of Bedel and Guyon et al, as applied above, and further in view of Aurio et al [20060099324] and Young et al [Pat. No. 6,048,564].

Downing, Bedel, and Guyon et al teach the above mentioned concepts. Downing, Bedel, and Guyon et al do not recite the dough having konjac glucomannan, animal-based protein concentrate, and baking powder. Aurio et al teach a dough product

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comprising konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) as well as mixing (paragraph 0085) which naturally would have provided aeration of the mixture. Young et al teach a method for making dough comprising konjac glucomannan (column 4, lines 29-49) and baking powder (column 17, line 37). It would have been obvious to one of ordinary skill in the art to incorporate the konjac glucomannan, animal-based protein concentrate, and baking powder of Aurio et al and Young et al into the invention of Downing, in view of Bedel and Guyon et al, since all are directed to methods of making food, since Downing already included dough as the food, since Aurio et al teach that konjac glucomannan (paragraph 0024) and animal-based protein concentrate (paragraph 0033) were commonly used in conjunction in food, since Young et al teach that doughs containing konjac glucomannan commonly had baking powder to provide leavening (column 17, line 37), and since all of these ingredients were commonly used in doughs in order to provide the desired taste, texture, and aroma.

8. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morley, in view of Guyon et al, as applied above, and further in view of Roberts et al [Pat. No. 5,359,924].

Morley and Guyon et al teach the above mentioned concepts. Morley and Guyon et al do not recite linked shells. Roberts et al teach a method for molding and cooking dough by use of linked shells (Figures 4-5, #34 & 36). It would have been obvious to one of ordinary skill in the art to incorporate the links of Roberts et al into the invention of Morley, in view of Guyon et al, since all are directed to methods of cooking and molding

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foods, since plural shells of Morley would have provided an increased production rate as well as providing greater flexibility in the amount and timing of the cooked foods, and since the links of Roberts et al provided a simple and efficient means for connecting plural shells and thereby ensuring that the foods are cooked to an equal degree.

9. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downing, in view of Bedel and Guyon et al, as applied above, and further in view of Roberts et al [Pat. No. 5,359,924].

Downing, Bedel, and Guyon et al teach the above mentioned concepts. Downing, Bedel, and Guyon et al do not recite linked shells. Roberts et al teach a method for molding and cooking dough by use of linked shells (Figures 4-5, #34 & 36). It would have been obvious to one of ordinary skill in the art to incorporate the links of Roberts et al into the invention of Downing, in view of Bedel and Guyon et al, since all are directed to methods of cooking and molding foods, since plural shells of Downing would have provided an increased production rate as well as providing greater flexibility in the amount and timing of the cooked foods, and since the links of Roberts et al provided a simple and efficient means for connecting plural shells and thereby ensuring that the foods are cooked to an equal degree.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morley, in view of Guyon et al and Roberts et al, as applied above, and further in view of Remley [Pat. No. 3,007,595].

Morley, Roberts et al, and Guyon et al teach the above mentioned concepts. Morley, Roberts et al, and Guyon et al do not recite a c-shaped linkage and pin linkage. Remley

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teaches a method for cooking foods by use of a shell with linkages comprising a c-shaped linkage and pin linkage (Figures 6-7, #37 & 42). It would have been obvious to one of ordinary skill in the art to incorporate the c and pin linkages of Remley into the invention of Morley, in view of Guyon et al and Roberts et al, since all are directed to methods of cooking in shells, since Roberts et al already taught linking shells and using any type of linking means (column 4, line 24), and since the c and pin linkages of Remley provided a simple and effective means for linking cooking components (column 3, lines 3-43).

11. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downing, in view of Guyon et al, Bedel, and Roberts et al, as applied above, and further in view of Remley [Pat. No. 3,007,595].

Downing, Roberts et al, Bedel, and Guyon et al teach the above mentioned concepts. Downing, Roberts et al, Bedel, and Guyon et al do not recite a c-shaped linkage and pin linkage. Remley teaches a method for cooking foods by use of a shell with linkages comprising a c-shaped linkage and pin linkage (Figures 6-7, #37 & 42). It would have been obvious to one of ordinary skill in the art to incorporate the c and pin linkages of Remley into the invention of Downing, in view of Guyon et al, Bedel, and Roberts et al, since all are directed to methods of cooking in shells, since Roberts et al already taught linking shells and using any type of linking means (column 4, line 24), and since the c and pin linkages of Remley provided a simple and effective means for linking cooking components (column 3, lines 3-43).

Response to Arguments

12. Applicant's arguments filed 9/28/09 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Morley, Wilcox, and Downing specifically exclude and teach away from frying in oil. However, applicant has not pointed out where the references suggest this theory. Morley merely states that doughnuts were previously made by placing the doughnuts in the oil to cook them (column 1, lines 1-19). However, Morley does not exclude placing the cooking device in hot oil. In fact, Morley specifically teaches the use of a heat source of any suitable manner (page 2, line 3) which would naturally include hot oil, as taught by Guyon et al.

In response to applicant's argument that Wilcox could not be submerged (as taught by Guyon et al) since the handles would get greasy, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It was well within the skill

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set of one of ordinary skill in the art to simply extend and re-shape the handles so that they are above the oil surface when the molds are submerged, as shown by Guyon et al (Figure 1, #19).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794